

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Form 7. Mediation Questionnaire**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form07instructions.pdf>

9th Cir. Case Number(s) 21-55852

Case Name Little Orbit, LLC vs Descendent Studios, Inc./Eric Peterson

Counsel submitting this form M. Danton Richardson

Represented party/ parties Little Orbit, LLC

Briefly describe the dispute that gave rise to this lawsuit.

This dispute arises out of a Development Agreement between Little Orbit and Descendent regarding the development of a video Game. Little Orbit is a video game publisher which has released over 20 titles over the last ten plus years. Descendent was (it is now out of business) an unproven video game developer whose one and only project was the video Game in dispute. Little Orbit invested over two million dollars into the development of the at issue video Game, but Descendent consistently failed to meet contract requirements ultimately resulting in the termination of the Development Agreement for cause and this lawsuit.

The parties participated in a settlement conference before Magistrate John D. Early on November 17, 2020, which resulted in the parties agreeing to certain “deal points” set forth in Binding Settlement Terms Sheet ("BSTS") providing a license of all game IP to Little Orbit in return for certain payment and other deadlines “within [] days of signing [a] written memorialization.”

Unfortunately, several disputes regarding the meaning of some of the terms resulted in the parties not being able to sign a long form settlement agreement and Defendants brought a motion to Enforce the BSTS, which was denied as premature. Defendants' later refused to turn over "all game IP" as covered by the BSTS which led to Little Orbit bringing a Motion to Set Aside the BSTS. Defendants also later filed a Second Motion to Enforce the BSTS.

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Briefly describe the result below and the main issues on appeal.

Appellant Little Orbit appeals from a July 27, 2021, Order by the District Court denying Little Orbit's Motion to Set Aside the Binding Settlement Terms Sheet ("BSTS") and granting Defendants/Appellees DESCENDENT STUDIOS INC. and ERIC PETERSON's subsequently filed Second Motion to Enforce the BSTS, without even waiting for Little Orbit to submit an opposition thereto. The BSTS was hastily drafted during a settlement conference with Magistrate Judge John D. Early and which merely set forth a short-hand version of key deal points lacking details or specifics and for which there was no meeting of the minds on key issues, or clear mistake on the part of Little Orbit,

Numerous issues are raised by this appeal including:

- 1) the District Court's granting a motion to Enforce the BSTS only 6 days after it was filed and without allowing Little Orbit the opportunity to file any Opposition thereto;
- 2) the District Court's using the un-responded to new issues and arguments raised in the Motion to Enforce as grounds for denying Little Orbit's Motion to Set Aside the BSTS.
- 3) Whether the BSTS should be set aside for lack of meeting of minds or mistake as to the meaning of "revenues";
- 4) The proper interpretation of the remedy clause in the BSTS;

Describe any proceedings remaining below or any related proceedings in other tribunals.

Defendants have threatened to bring a motion to terminate the license provided to Little Orbit as a result of Little Orbit not complying with the Court's July, 27, 2021, Order which is the subject of this appeal. No Motion is currently pending.

Signature s/ M. Danton Richardson

Date August 25, 2021

(use "s/[typed name]" to sign electronically-filed documents)

CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2021, I electronically filed the foregoing document with the Clerk of the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. Counsel in this case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

/s/ M. Danton Richardson

M. Danton Richardson
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Little Orbit LLC